

OFFICE OF THE MONITOR
NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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VIA ECF

The Honorable Laura T. Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain,

The Monitoring Team writes to provide the third update on the operation of Horizon Juvenile Detention Center (“Horizon”). The Monitoring Team previously advised the Court on the status of the operation of Horizon on October 31, 2018 (dkt. 318) and December 4, 2018 (dkt. 320).

The Monitoring Team continues to closely monitor the operation of Horizon, routinely reviewing reports of use of force (“UOF”) incidents and corresponding video. The Monitoring Team is also frequently engaged with representatives from the Department of Correction (“DOC” or “Department”) and the Administration of Child Services (“ACS”). The Monitoring Team has also continued to visit the facility to observe operations and speak with youth and staff from DOC and ACS.

Horizon is still struggling to adequately manage the use of force and reduce violence within the facilities. While the number of UOF has decreased since the initial

month of operation in October 2018,¹ the UOF rate is still significantly higher—almost double—than the average UOF rate of 38.4 for these same youth when housed at RNDC from January to June 2018.

	Average Daily Population	Rate of UOF	Total Number of UOF Incidents	<i>Class A</i>	<i>Class B</i>	<i>Class C</i>
October 2018	86	97.67	84	2	46	36
November 2018	79	53.16	42	0	30	12
December 2018	72	72.22	52	1	23	28
January 2019 ²	67	79.10	53	0	30	23

Data on the level of violence at the facility presents a similarly concerning picture. The average rate of youth-on-youth violence both just before (July-September 2018; 45.2) and just after (October-December 2018; 45.5) the transfer to Horizon is significantly higher than the prior two years when these youth were housed at RNDC. Furthermore, individual-level data shows that a large proportion of violence is committed by a relatively small number of youth with multiple acts of aggression each month. New interventions for these youth are discussed in the Behavior Management section, below. Overall, the Monitoring Team remains very concerned about the serious risk of harm for both youth and staff at Horizon.

Despite the high rates of UOF and violence, it is positive that, for the most part, staff appear to be using force appropriately and are adjusting to the prohibition on the use of OC. Given what can be seen on video footage and in written reports, staff are making genuine attempts to utilize interpersonal skills to de-escalate events. Force is generally

¹ The youth began to transition to Horizon in late September. While the youth transitioned to Horizon without incident, there were five UoF incidents on the last day of September.

² There have been only 9 UOF for the month of February as of February 18, 2019.

used appropriately when those efforts fail, although staff's conduct appeared to be unnecessary and/or excessive in a few cases.³ Additional staff are now responding to incidents more promptly to help defuse and contain the events, an improvement from October when staff were often outnumbered by youth during an incident. However, group disturbances continue to occur and youth occasionally arm themselves with makeshift weapons.

The Department and ACS have been working to implement a number of initiatives to reduce the frequency of violence in the facility which should also lower the UOF rate. As outlined in more detail below, this work includes addressing the recommendations outlined in the Monitor's Sixth Report (see *dk.* 317 at pgs. 158 to 162, or "Report") and the October 31 status letter to the Court.⁴

Behavior Management Program

The Monitoring Team has continued to offer extensive technical assistance to address the recommendations regarding developing a behavior management program and appropriate sanctions and consequences for youth misconduct.⁵ ACS developed a detailed workplan to implement a more robust behavior management program (called

³ In at least one case, the Department took immediate action to suspend the staff member and re-assign the staff member to another facility.

⁴ The Monitoring Team initially recommended an expansion of the State's 7-day waiver for the Department to use OC spray with person-specific applications (*see* 6th Monitor's Report at pgs. 158 to 162 and October 31 Letter). The State did not take action on this recommendation and thus the Monitoring Team believes the best course of action is to push forward in developing staff's skill and expertise in relying on physical interventions to respond to crises.

⁵ Policies, procedures, and practices related to the behavior management program are subject to the Monitor's approval. *See* Consent Judgment § XVI. (Inmate Discipline), ¶ 3. Further, the Monitoring Team must be consulted on the development of implementation of systems, policies, and procedures for youth who commit infractions. *See id.*, ¶ 4.

“STRIVE+”) and appears to be on track with each of the required steps. Furthermore, ACS and DOC now conduct multidisciplinary team meetings to develop individualized intensive intervention plans for those youth who frequently engage in violent behavior. The Monitoring Team will regularly review all such plans and offer technical assistance as appropriate.

Room Confinement

Room confinement is an essential de-escalation tool for safely managing the immediate aftermath of violent incidents. A short period of time in which youth are able to de-escalate—with guidance and support from facility staff—has been shown to decrease the likelihood that tensions will re-ignite and to increase opportunities for youth to reconsider their behavior. It also provides an opportunity for staff to regain operational control of the housing unit. That said, room confinement must also be properly managed and guided by policy and procedures that ensure youth do not languish in their rooms.

As an initial matter, Horizon is underutilizing this essential tool given the level of disorder in the facility. The Monitoring Team is very concerned that this de-escalation strategy is not being employed and plans to further investigate current practices for managing the aftermath of incidents in order to provide incident-specific guidance.

In the limited occasions when room confinement *was* used, staff did not follow the procedures required by policy. In its assessment of November 2018 room confinement data, the Monitoring Team found that most of the protections required by policy were not being followed with any consistency. In December 2018, the Monitoring Team discussed these findings with ACS and DOC and requested subsequent data to assess any improvements in performance. Unfortunately, January 2019 data revealed that

staff performance had not improved at all. The Monitoring Team has given specific feedback on the problems observed and continues to watch this issue closely.

SCM Training

The Department has engaged JKM Training, Inc., the developer of Safe Crisis Management (“SCM”), to provide monthly training to DOC staff with additional opportunities to practice SCM techniques in order to acquire the appropriate reflexes and confidence to intervene safely.⁶ The training will focus on Emergency Safety Physical Intervention techniques and reviewing video from particular incidents with staff to discuss how the response can be improved in the future. The Department reports that the first monthly refresher training was provided last week to over 70 staff during a 2-day training (~25% of the staff at Horizon). The Monitoring Team continues to strongly encourage the City to continue to provide the necessary resources to the Department to support this effort and ensure this additional training for staff occurs as soon as possible.

Body-Worn Cameras

The Department continued to work on the implementation of body-worn cameras at Horizon, including working with the State Commission on Correction (“SCOC”) and the Office of Children and Family Services (“OCFS”) to obtain necessary approvals. The policy was recently finalized and issued. The Department also began taking the necessary steps to identify which staff will wear the cameras and to install necessary equipment. Staff training to use body-worn cameras began last week. The Monitoring

⁶ As of February 1, 2019, 282 of the 306 staff assigned to Horizon have received the initial SCM training.

The Monitoring Team is closely monitoring the situation to ensure all staff assigned to Horizon receive this initial training as soon as possible.

Team observed one training session and found it provided staff with appropriate guidance on the use of the body-worn cameras. Staff were engaged in the training and were open to the use of body-worn cameras in the facility. The Department intends to fully implement the use of these cameras in the next few weeks.

Next Steps

The Monitoring Team remains committed to applying its considerable expertise in operational transitions and best practices for juvenile offenders to guide the Department and ACS in this monumental task. The Monitoring Team will continue to monitor the level of violence at Horizon closely and confer with the Parties as necessary. The Monitoring Team respectfully recommends that it provide the Court with our next status update via the Seventh Monitor's Report that is scheduled to be filed on April 18, 2019.

Sincerely,

s/ Steve J. Martin
Steve J. Martin, Monitor

s/ Anna E. Friedberg
Anna E. Friedberg, Deputy Monitor